

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DANIEL ALBERT NEWMAN,

Petitioner,

v.

LINDA METRISH,

Respondent,

Civil Nos. 04-CV-74582-DT
HONORABLE ARTHUR J. TARNOV
UNITED STATES DISTRICT JUDGE

**OPINION AND ORDER GRANTING THE UNCONDITIONAL WRIT OF HABEAS
CORPUS, ORDERING THE EXPUNGMENT OF PETITIONER'S CONVICTION,
BARRING THE REPROSECUTION OF PETITIONER BY THE STATE OF MICHIGAN,
AND CANCELLING BOND.**

On June 15, 2007, this Court granted petitioner an unconditional writ of habeas corpus, finding that there had been insufficient evidence presented at trial to prove beyond a reasonable doubt that petitioner had committed the crimes of second-degree murder and felony-firearm for which he was convicted. *Newman v. Metrish*, 492 F. Supp. 2d 721 (E.D. Mich. 2007). On October 29, 2008, the Court released petitioner on an unsecured bond in the amount of \$ 10,000.00.

On October 6, 2008, the Sixth Circuit affirmed the granting of the writ of habeas corpus. *Newman v. Metrish*, 543 F. 3d 793 (6th Cir. 2008). On November 5, 2008, the Sixth Circuit denied respondent's emergency motion for a stay of this Court's order granting petitioner's immediate release from custody on bond. *See Newman v. Metrish*, 300 Fed. Appx. 342 (6th Cir. 2008). On February 19, 2009, the Sixth Circuit issued its mandate in this case.

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In light of the Sixth Circuit's decision, this Court will again issue an unconditional writ of habeas corpus.

The Court will also order that the judgment of conviction against petitioner for the offense of second-degree murder and felony-firearm from the Livingston County Circuit Court shall be vacated and the record of conviction shall be expunged. This Court has the power to order the expungement of petitioner's conviction as part of the issuance of an unconditional writ. *Satterlee v. Wolfenbarger*, 453 F. 3d 362, 370 (6th Cir. 2006). The Court further orders the Clerk of the Circuit Court of Livingston County, Michigan to forward a copy of this Court's order to any person or agency that was notified of petitioner's arrest or conviction involved with these offenses. *See Ward v. Wolfenbarger*, 340 F. Supp. 2d 773, 776-77 (E.D. Mich. 2004).

The remaining question is whether the State of Michigan should be permitted to re-prosecute petitioner. Where a reviewing court overturns a conviction on the ground that the prosecution presented insufficient evidence of guilt, "that finding is comparable to an acquittal, and the Double Jeopardy Clause precludes a second trial." *Monge v. California*, 524 U.S. 721, 729 (1998)(citing *Burks v. United States*, 437 U.S. 1, 16 (1978)). In this case, the Double Jeopardy Clause prevents this Court from ordering a re-trial for petitioner, given that the prosecutor had already attempted to make its case for charging petitioner with second-degree murder and felony-firearm and failed to prove petitioner's guilt beyond a reasonable doubt. *See e.g. Gall v. Parker*, 231 F. 3d 265, 335 (6th Cir. 2000). Permitting the re-prosecution of petitioner "would not remedy the constitutional violation that led to the issuance of the writ." *Satterlee*, 453 F. 3d at 370,

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n. 7.

Finally, in light of the fact that the proceedings have concluded in this matter, the Court will cancel the Order Setting Conditions of Release, dated October 29, 2008.

ORDER

IT IS HEREBY ORDERED THAT an Unconditional Writ of Habeas Corpus is GRANTED in accordance with the Court's previous order.

IT IS FURTHER ORDERED that Petitioner's convictions for second-degree murder and possession of a firearm in the commission of a felony be vacated and expunged from his records by the Clerk of the Circuit Court for Livingston County, Michigan in accordance with the terms outlined by the Court.

IT IS FURTHER ORDERED THAT the State of Michigan shall be barred from reprosecuting petitioner for these offenses.

IT IS FURTHER ORDERED that the Order Setting Conditions of Release dated October 29, 2008 is cancelled.

S/Arthur J. Tarnow
Arthur J. Tarnow
United States District Judge

Dated: March 16, 2009

I hereby certify that a copy of the foregoing document was served upon counsel of record on March 16, 2009, by electronic and/or ordinary mail.

S/Catherine A. Pickles
Judicial Secretary